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10                   UNITED STATES DISTRICT COURT  
11                   WESTERN DISTRICT OF WASHINGTON  
12                   AT TACOMA

13                   SAM DONAGHE,  
14                   Plaintiff,  
15                   v.  
16                   PAUL TEMPOWSKY *et al.*,  
17                   Defendants.

18  
19                   Case No. C04-5541RBL  
20                   REPORT AND  
21                   RECOMMENDATION  
22                   **NOTED FOR:**  
23                   April 29<sup>th</sup>, 2005

24                   This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to  
25 Title 28 U.S.C. § 636(b)(1)(B). On January 28<sup>th</sup>, 2005 the court entered an order adopting a Report  
26 and Recommendation. (Dkt. # 57). That order gave the plaintiff until February 28<sup>th</sup>, to file an  
amended complaint. As of April 4<sup>th</sup>, 2005 no amended complaint has been received. The court now  
recommends the remaining issues in this action be dismissed for lack of prosecution.

27                   Plaintiff has failed to comply with the court's order to file an amended complaint. As there is  
28 no complaint before the court this action cannot proceed. **DISMISSAL WITHOUT PREJUDICE**  
of the remaining issues is warranted. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **April 29<sup>th</sup>, 2005**, as noted in the caption and to send the parties a copy of this Report and Recommendation.

DATED this 5<sup>th</sup> day of April, 2005.

/S/ Karen L. Strombom  
Karen L. Strombom  
United States Magistrate